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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 JAMES EDWARD CURTIS,  
11 Plaintiff,

12 v.

13 TERRY J. BENDA, *et al.*,  
14 Defendants.

Case No. C08-5109FDB/KLS

ORDER GRANTING LEAVE TO  
AMEND

15 Before the Court is Plaintiff's motion to amend his Complaint. Dkt. # 23. Having reviewed  
16 the motion, the proposed amendments, and Defendant Riley's opposition, the Court finds that the  
17 motion should be granted.

18 **BACKGROUND**

19 The chronology of pertinent events related to Mr. Curtis's motion to amend are as follows:  
20 Mr. Curtis filed his original complaint on February 18, 2008, claiming that Defendants Riley and  
21 Benda sought to deprive him of his life and liberty without due process of law in violation of his  
22 Fourteenth Amendment rights by conspiring and fabricating evidence to be used in filing criminal  
23 assault charges against him in Clallam County Superior Court in December 3, 2004. Dkt. # 4.  
24 Defendant Riley moved to dismiss the complaint as time barred. Dkt. # 11. Mr. Curtis responded,  
25 *inter alia*, that pursuant to *Heck v. Humprhey*, 512 U.S. 477 (1994), his cause of action did not  
26 accrue until 2005, when the state criminal charges were dropped. Dkt. # 16, p. 7. Defendant Riley  
27 conceded that the *Heck* doctrine was dispositive on the statute of limitations issue, but also  
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1 complained that Mr. Curtis had not adequately plead a cause of action against him. Dkt. # 17, p. 2  
2 (“Plaintiff simply asserts that his cause of action against Defendant Riley is evidenced by, and  
3 culminated in, the filing of criminal charges against the Plaintiff in Clallam County Superior Court  
4 on December 3, 2004 ...[i]f Plaintiff intends to litigate these particular facts raised in his response,  
5 he should be required to amend his original Complaint.”).

6 The Court denied Defendant’s motion to dismiss. Dkts. # 18, 19. On November 21, 2008,  
7 Mr. Curtis filed his motion seeking leave to amend his complaint. Dkt. # 23. Defendant Riley filed  
8 his response, objecting to the motion on the ground that Mr. Curtis had failed to attach a proposed  
9 complaint for the Court’s review. Dkt. # 23. The Court granted Mr. Curtis leave to supplement his  
10 motion to amend to attach his proposed amendment. Dkt. # 27. Mr. Curtis timely filed his  
11 proposed Amended Complaint. Dkt. # 29.

## 12 DISCUSSION

13 Rule 15(a) (2) of the Federal Rules of Civil Procedure provides in relevant part that a party  
14 “may amend its pleading only with the opposing party's written consent or the court's leave” and  
15 that the court “should freely give leave when justice so requires.” In ruling on a motion to amend  
16 under Rule 15(a), a court weighs the following factors: bad faith, undue delay, prejudice to the  
17 opposing party, whether the amendment would be futile, and whether the party has previously  
18 amended his or her pleadings. *See Western Shoshone Nat'l Council v. Molini*, 951 F.2d 200, 204  
19 (9th Cir.1991).

20 Defendant Riley opposes the proposed amendments to Mr. Curtis’s complaint on the  
21 grounds of futility only. Dkt. # 31. He argues that the only amendments proposed against him  
22 involve new allegations of emotional injury due to Mr. Curtis’s time spent in solitary confinement  
23 which, he asserts, are barred pursuant to 42 U.S.C. § 1997e(e). Pursuant to that section, “no Federal  
24 civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for  
25 mental or emotional injury suffered while in custody without a prior showing of physical injury.”  
26 Defendant Riley argues that Mr. Curtis has not alleged any actual physical injury as a result of his  
27 confinement other than an undiagnosed “psychosomatic disorder that manifested itself in chronic  
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1 abdomen and joint pain, which, in turn, caused months of physical and emotional suffering.” Dkt. #  
2 31, p. 3 (citing Dkt. # 29-3, ¶ 3.195).

3 42 U.S.C. § 1997e(e) prohibits a prisoner from bringing a civil action for mental or  
4 emotional injury without a prior showing of “physical injury.” *Oliver v. Keller*, 289 F.3d 623, 629  
5 (9<sup>th</sup> Cir. 2002). This means that a prisoner may not obtain compensatory damages for mental or  
6 emotional injury if the “physical injury” is *de minimis*. *Id.* But the Ninth Circuit has held that to the  
7 extent that a plaintiff has actionable claims for compensatory, nominal, or punitive damages  
8 premised on violations of constitutional rights, and not on mental or emotional injuries, § 1997e(e)  
9 is not a bar to such claims. *Id.* at 630.

11 In *Oliver*, the plaintiff sought punitive damages and his complaint was construed to be  
12 “consistent with a claim for nominal damages.” *Id.* at 630 (citing *Haines v. Kerner*, 404 U.S. 519,  
13 520 (1972) (*pro se* complaints are to be liberally construed)). The Court determined that a prisoner  
14 was entitled to seek compensatory, nominal, and punitive damages premised on violations of his  
15 Fourteenth Amendment rights and not on any alleged mental or emotional injuries. *Oliver*, 289 F.3d  
16 at 629-30; *see also Cannell v. Lightner*, 143 F.3d 1210, 1213 (9th Cir.1998) (§ 1997e(e) does not  
17 apply to First Amendment claims).

19 Thus, to the extent that Mr. Curtis has actionable claims for compensatory, nominal, and  
20 punitive damages based on violations of his Fourteenth Amendment rights, his claims are not barred  
21 by § 1997e(e). However, to the extent that Mr. Curtis does assert damages based on a claim for  
22 mental or emotional injuries, that issue should be addressed in a subsequent motion.<sup>1</sup>

24 Accordingly, it is **ORDERED**:


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27 <sup>1</sup> Defendant Riley also argues that Mr. Curtis’s amendments as to Mr. Benda are  
28 insufficient. Dkt. # 31, pp. 3-4. However, in the same motion, defense counsel advises the Court  
that she does not represent Mr. Benda. Dkt. # 31, p. 1.

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- (1) Plaintiff's motion to amend (Dkt. # 23) is **GRANTED**.
- (2) The Clerk is directed to send copies of this Order to Plaintiff and counsel for Defendants.

DATED this 20th day of April, 2009.

  
Karen L. Strombom  
United States Magistrate Judge